

Attachment 4: The Relationship of Manual 1780 and Handbook 1780-1 to Past BLM Guidance on Tribal Consultation

1. MS 8160: *Native American Coordination and Consultation*, and H-8160-1: *General Procedural Guidance for Native American Consultation*

MS 8160 and H-8160-1 were issued in 1990 and 1994 respectively. The intent of these directives was to provide general information and policy on the Bureau of Land Management's (BLM's) coordination, consultation and fiduciary responsibilities with respect to the Native American cultural and religious concerns. The directives were intended to provide operational policies and procedures for individual management programs. The operational policies and procedures were to be released as follow-up program-specific handbooks under the appropriate subject function codes.

2. MS 8120: *Tribal Consultation Under Cultural Resources* and H-8120-1: *General Procedural Guidance for Native American Consultation*

The program-specific handbooks within the 8160 series were never issued. During the 1990's, however, significant legal, regulatory, and policy changes regarding tribal relations and cultural resources occurred. In 1997 the BLM also signed a national Programmatic Agreement (PA) with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) regarding the manner in which the BLM addressed its responsibilities under the National Historic Preservation Act. Subsequent to these events the cultural program (WO-240) decided to update and publish tribal consultation guidance focusing on its own program as part of the comprehensive revision of the entire 8100 cultural program manual series required by the PA.

Manual 8120 and Handbook 8120-1 were released in 2004. These directives specifically focused on the cultural program's responsibilities for tribal consultation and coordination under numerous authorities. In addition, the directives also stated that guidance on consulting with tribes under other program authorities would be found in other programs' directives and under appropriate subject-function codes. However, no other program to date has issued guidance addressing program-specific responsibilities for tribal consultation and coordination.

3. DRAFTS: MS 1780: *Tribal Relations*, and H-1780-1—*Improving and Sustaining BLM Tribal Relationships*

The tribal-federal government relationship has continued to evolve over the past decade. Secretarial Order 3317 and the issuance of the Department of the Interior's (DOI's) tribal consultation policy address broad responsibilities held by all DOI agencies and programs. The BLM cultural program also negotiated a revised national PA in 2012 with ACHP and the NCSHPO.

The development of DOI policy and the revision of the PA included several years of consultation with Indian tribes throughout the country. One common theme in the consultations addressed the need for broad guidance, as intended in the original MS 8160, rather than guidance focused solely on cultural resource concerns. Therefore, the BLM cultural program is coordinating an effort to develop and provide this guidance in the MS 1780 and Handbook 1780-1. This new guidance presents a comprehensive approach to tribal consultation and relations across all program areas. The presentation of topics and organization, detailed below, represent a clear break from the cultural resources-centered approach of 8120. The direction appears within the 1700 series because this section of the BLM manual series includes relations with other governments.

A. Manual 1780

- Chapter 1 contains the basic organization required to create a guidance manual. Sections cover purpose, objectives, authority, responsibility, references, policy, and file and records maintenance.
- The guidance clearly establishes that the BLM intends to develop long-term relationships with tribes based on common interests in managing and protecting lands and resources important to Indian tribes and the American people.
- Policies articulated are designed to meet goals established in the Department of the Interior Policy on Consultation with Indian Tribes (Secretarial Order 3177), by the Consultation Committee of the Interagency Working Group on Indian Affairs, in the Presidential Memorandum on Tribal Consultation (November 5, 2009), and in Executive Order 13175.
- The authorities cited and described in MS 1780 are comprehensive and include treaties, laws, regulations, Executive orders/Presidential memoranda and orders from the Secretary of the Interior for all program areas.
- Responsibilities are charged to all participants in tribal consultation, emphasizing the BLM line authority, but also defining the role of tribal liaisons, project managers, various program specialists, and land use applicants.
- New policies established include:
 - Committing to establish an open and ongoing dialogue with tribal officials.
 - Recognizing that the BLM has a broad trust responsibility that in some cases includes a fiduciary duty related to Indian trust assets and property or interests reserved by or granted to Indian tribes or Indian individuals by treaty, statute, and Executive orders.
 - Allowing compensation to be provided to tribes on a case by case basis for Native American contributors of information, comments, or input into the BLM's decision-making processes.
 - Establishing additional flexibility in processes by which Native American human remains and cultural items may be reburied on public lands.

- Requiring inclusion of performance measures to ensure accountability of line officers in carrying out their responsibilities associated with BLM tribal consultation policies.
- Committing to adequate staffing to carry out tribal consultation policies and procedures.
- Requiring BLM employees to engage in tribal consultation and insert established codes for their time to the appropriate program element in conformance with the BLM's cost management structure.
- Chapter 2 articulates and distinguishes the BLM's relationships, under various authorities, to federally recognized tribes; Indian individuals and nongovernmental tribal groups; and groups and communities that are not federally recognized.
- Chapter 3 explains how tribal relations inform decision making and program management. Topics covered include inventories, cooperating agency status, consistency review, special designations, documentation, and agreements. The relationship of tribal consultation to environmental justice is described.
- Chapter 3 also summarizes the importance of Indian tribal coordination and consultation to a wide variety of BLM programs, including: cadastral survey; cultural resources; fire and aviation; forestry; lands and realty; minerals; procurement; rangeland and plant conservation; recreation; renewable energy; soil, water, and air; wildlife and fisheries; and wilderness.
- Useful appendices include guidance on how line managers can judge whether or not adequate tribal consultation has occurred and a model position description of a BLM tribal liaison.

B. Handbook H-1780-1

- Chapter I introduces the handbook material and its relationship to the 1780 manual. It explains why the directives are housed within the 1700 manual series and how this guidance replaces and expands tribal consultation guidance formerly housed at MS 8120 and H-8120-1.
- Chapter II presents the historic context and legal foundation of the BLM government-to-government relationships with tribes. This is the first time that an explanation is provided for how the BLM and tribal governmental interactions are governed by the key concepts of tribal sovereignty, federal trust responsibility to federally recognized tribes, and government-to-government relationships. A historical overview summarizes the context of engagement with tribes; the general background of Indian treaties; the special legal status of federally recognized tribes; the BLM's relationships and obligations towards non-federally recognized groups and individuals; the distinctions between trust responsibilities and trust assets; and reserved rights/off-reservation treaty rights.
- Chapter III establishes the BLM's intent to build a positive, broad-based relationship with Indian tribes. Guidance is provided to build partnerships based on common interests, financial support, confidentiality, and accountability. This chapter departs from prior policies that focused narrowly on legal compliance. This guidance includes suggestions

to establish and sustain open-ended discussions and joint efforts to manage and protect public lands, and will benefit legal compliance activities.

- Chapter IV provides practical guidance on the mechanics of government-to-government consultations. This includes 1) how to conduct and document consultation efforts, 2) identification of tribal leaders or their representatives, 3) developing strategies to achieve success in relationships, communications, meetings, and formal government-to-government consultations, and 4) recognizing tribal motivations for consultation.
- Chapter V defines the legal framework under which the BLM consults for land use planning and decision support. It also presents how to coordinate tribal consultation and key differences among the NEPA, FLPMA, E.O. 13175, AIRFA, and E.O. 13007.
- Chapter VI outlines requirements for tribal consultation and opportunities for tribal partnerships within National Conservation Lands.
- Chapter VII through Chapter XVI establish program-specific guidance for those programs in which BLM-tribal consultations and relations are most active. The handbook will be amended to include additional chapters as they become available. The proposed handbook organization is as follows:

Chapter VII--Fire Management Program

Chapter VIII--Forest and Woodlands Program

Chapter IX--Rangeland

Chapter X--Fish and Wildlife Program

Chapter XI--Cultural Resources Program

Chapter XII--Renewable Energy Program

Chapter XIII--Fluid Mineral Program (currently reserved)

Chapter XIV--Minerals Program (Currently addresses both solid and fluid minerals; to be re-drafted once the Fluid Minerals stand-alone chapter becomes available.)

Chapter XV--Cadastral Survey Program

Chapter XVI--Realty Program (currently reserved)

- Examples are provided throughout the handbook of successful cooperative efforts with tribes; assistance agreements; internship programs; 638 compacts; and a Memorandum of Agreement that better define and streamline the consultation process. These will be posted on a website which will be provided. The purpose of the website is to encourage development of positive working relationships with tribes based on successful models elsewhere in the BLM.

- MS 1780 and H-1780-1 represent the culmination of decades of work and experience consulting with Indian tribes. These directives present a comprehensive and coordinated approach towards tribal consultation and the development of proactive partnerships with tribes across program lines. This is by far the most inclusive and detailed guidance to date on strategies to improve and sustain the BLM-tribal relations.